

STATE OF MICHIGAN
COURT OF APPEALS

In re Estate of JUNE LOUISA CUMMIN,
Deceased.

EDWARD MURPHY, Personal Representative of
the Estate of JUNE LOUISA CUMMIN,
Deceased,

Petitioner-Appellee,

v

BETH A. HEGYI,

Respondent-Appellant.

FOR PUBLICATION
September 9, 2003
9:15 a.m.

No. 235495
Clare County Probate Court
LC No. 00-013321-SE

Updated Copy
November 7, 2003

Before: Schuette, P.J., and Sawyer and Wilder, JJ.

SCHUETTE, P.J. (*concurring in part and dissenting in part*).

I concur in the majority's decision to reverse and remand this case to the probate court. However, I respectfully dissent regarding the applicability of MCL 700.8101(2)(d) of the Estates and Protected Individual's Code (EPIC), and this Court's ruling in *In re Smith Estate*, 252 Mich App 120; 651 NW2d 153 (2002), to the facts in this case.

The facts of *In re Smith Estate* involved an evidentiary issue of whether a handwritten document was evidence of testamentary intent of the deceased or simply a desire to make a monetary gift in the future. This Court held that a devise under a will was not a vested or an accrued right. As a result, the *Smith* decision did not trigger the limiting provisions of MCL 700.8101(2)(d) regarding the general prohibition against self-dealing as set forth in MCL 700.1214.

Here, I believe that the prohibition against self-dealing (MCL 700.1214) is not superseded by the application of MCL 700.8101(2)(d) because no accrued or vested right exists under the facts and circumstances of this case. *See In re Smith Estate, supra*.

Therefore, on remand, MCL 700.8101(2)(d) should not be applied by the probate court during its review, and MCL 700.1214 should be applied to the facts of this case.

/s/ Bill Schuette